THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.1091 of 2005

Date of Decision: 7 - 8 -2006

Iqbal and another **.....Petitioners**

v.

Mahant Jairam Dass and another **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.S.S.dinarpur, Advocate
for the petitioners.

Mr.Krishan Singh, Advocate
for respondent No.1.

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P.S.PATWALIA, J.

The present revision petition has been filed challenging the order dated 3.1.2005 passed by the Civil Judge (Jr.Division), Jagadhari whereby an application for impleading the legal representatives of defendant No.1 moved by the petitioners was dismissed.

The respondent, Mahant Jairam Dass Chela Mahant Janki Dass filed a suit for declaration to the effect that he is the Mohtmim of Mandir Talab Tore Wala, Sadhaura in District Yamunanagar, with a further prayer that he is Mohtmim in all respects along with all movable and immovable properties thereof. In the suit apart from Janki Dass Chela Mahant Sita Ram, general public was impleaded as defendant. During the pendency of the proceedings in the suit, defendant No.1 Janki Dass died on 30.6.2004.

It was at this stage that an application was moved by the petitioners

claiming that during his life time Mahant Janki Dass had executed a legal and valid will dated 9.4.2004 which was duly registered with the Joint Sub Registrar, Sadhaura and as per the same, Iqbal Chela and Yasin Chela, petitioners herein, were his legal heirs having been duly adopted by him. They further claimed that they have inherited the property left by the deceased. They therefore prayed that their application be allowed.

The application was opposed by the plaintiff, respondent No.1 herein, on the ground that on the basis of a compromise arrived at between him and deceased Mahant Janki Dass in a civil suit, he was declared as owner in possession of the Mandir properties. He also claimed that Janki Dass had executed a valid will dated 14.1.2000 in his favour which was registered with the Sub Registrar, Sadhaura. It was claimed that the applicants had approached the Court on the basis of a forged will. It was further the case of the plaintiff that the property of a Hindu Mandir could not be transferred to a Muslim.

Learned trial Court dismissed the application after coming to a conclusion that the applicants could not be considered to be the legal representatives of deceased Janki Dass as he was not competent to execute the will with regard to Mahantship as it was not inheritable. Therefore finding that the will could not be executed in favour of the applicants, the application was dismissed.

Learned counsel for the petitioners has submitted before me on the strength of a judgment rendered by this Court in **S.Charanjit Singh and another v. Bharatinder Singh and others** reported as 1987 PLJ 137 that determination of the point as to who is the legal representative of the deceased plaintiff is only limited for bringing the legal representatives on record for conducting those legal proceedings only. He refers to the following observations:-

> "3. A Full Bench of this Court in *Mohinder Kaur v. Piara Singh*, A.I.R. 1981 Pb. & Hry. 130, has held that determination of the point as to who is the legal representative of the deceased plaintiff or

> defendant under Order 22 Rule 5 of the Civil Procedure Code is only for the purposes of brining legal representatives on record for the conducting of those legal proceedings only and does not operate as *res judicata* and the *inter se* dispute between the rival legal representatives has to be independently tried and decided in separate proceedings. In view of this the proper course to follow is to bring all the legal representatives on record so that they vouch-safe the estate of the deceased for ultimate benefit of the real legal representatives. This would also avoid delay in disposal of the suit....."
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> 4. For the reasons recorded above, the revision is allowed, the orders of the Court below are set aside and the question about the genuineness and validity of the Will is left open, with a direction to the trial Court to implead all the persons shown as legal representatives in the two applications, so as to vouch-safe the interest of the estate of the deceased...."

He further contends that proper course is to bring all the legal representatives on record so that they can vouch-safe the estate of the deceased for the ultimate benefit of the real legal representatives.

In the present case, the plaintiff is also claiming to be a Mohtmim on the basis of a civil suit and a will. Even though he has pleaded that he was appointed as a Mohtmim of the Mandir in the presence of Haryana Vaishnav Vrat Mandal, however, the Court is yet to go into this issue. The applicants are also claiming to be the legal representatives of Janki Dass. It is therefore in the interest of justice that the petitioners who claim themselves to be the legal representatives of Janki Dass be permitted to be impleaded as such so as to vouch-safe the interest

of the estate of the deceased. However, the question about genuineness and validity of the will is left open. The Court would examine the claim of the plaintiff in the light of the evidence that is led before it in the civil suit and opine accordingly.

The revision petition is accordingly allowed. The order dated 3.1.2005 is set aside and the petitioners are directed to be impleaded as legal representatives of defendant No.1 in the suit, subject to the observations made by me above.

(P.S.PATWALIA)
JUDGE

August 7, 2006.

RC